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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,677	03/30/2000	Stephan Meyers	4925-39	8738
7590	04/20/2004		EXAMINER	
Michael C Stuart Cohen Pontani Lieberman & Pavane 551 Fifth Avenue Suite 1210 New York, NY 10176			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	
DATE MAILED: 04/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/538,677	MEYERS, STEPHAN	
	Examiner	Art Unit	
	Beth Van Doren	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 February 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 and 9-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-7 and 9-12 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

1. The following is a non-final action in response to communications received 02/10/04. Claim 8 has been canceled and claims 11 and 12 have been added. Claims 1-7 and 9-12 are now pending.

Response to Amendment

2. After further search and consideration, Examiner has reconsidered the previously objected to as allowable subject matter and has decided to issue the current non-final office action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites “said user-manipulable control further includes input controls for indicating a most positive rating, a neutral rating, and a most negative rating, said processor being operative to move the currently playing content to the top of the rating list if the **most positive rating** is indicated, move the currently playing content up by one slot in the ratings list if the **positive rating** is indicated, move the currently playing content down by one slot in the ratings list if the **negative rating** is indicated, and move the currently playing content to the bottom of the ratings list if the **most negative rating** is indicated”. Therefore, the input controls are for a most positive, a neutral, and a most negative rating, but the outcomes are based on a

most positive, a positive, a negative, and a most negative rating. Therefore, there is no antecedent basis for the positive and the negative rating outcomes. For examination purposes, the claim has been construed as --said user-manipulable control further includes input controls for indicating a most positive rating, a neutral rating, and a most negative rating, said processor being operative to move the currently playing content to the top of the rating list if the most positive rating is indicated and move the currently playing content to the bottom of the ratings list if the most negative rating is indicated--. Clarification is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3, 6-7, and 9-12 are rejected under 35 U.S.C. 102(a) as being anticipated by *Rio*

Portable MP3 Player bundled with MusicMatch Jukebox. The following references disclose the features of the product:

- i. “MusicMatch and Xing Technology introduce MusicMatch Jukebox” from the press releases of www.musicmatch.com (referred to herein as reference A);
- ii. “MusicMatch delivers breakthrough music personalization service in new MusicMatch Jukebox” from the press releases of www.musicmatch.com (referred to herein as reference B);

iii. Screenshots of www.musicmatch.com retrieved from archive.org (referred to herein as reference C, and which specifies the use of the MusicMatch Jukebox software with the Rio Player); and

iv. Screenshots from www.diamonmm.com of **Rio PMP 300** retrieved from archive.org (referred to herein as reference D, Rio PMP 300 is the player disclosed as used with MusicMatch Jukebox in reference C, page 3).

5. As per claim 1, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* teaches a portable media player and rating apparatus for rating media content, comprising:

a user-manipulated control dedicated for generating a signal indicating a user-supplied rating of currently played media content in response to a user-supplied rating, the user-supplied rating corresponding to one of a plurality of predefined categories of preferences (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, and reference C, page 1, sections 1 and 2, and page 2, sections 1 and 2, wherein the user generates a signal via his/her PC and/or playing device, the signal indicating a rating of the currently played media content. The user's rating is a preference rating which helps build the user's profile);

the portable media player (See at least reference B, page 1, sections 2 and 3, and reference C, page 3) comprising:

a memory device for storing media contents and a ratings list comprising a list of user supplied ratings associated with the stored media contents (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, page 1, sections 1-3, and reference C, page

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1, sections 1 and 2, page 2, sections 1 and 2, and page 3, which discloses a memory device that stores media contents and information about the media contents); and

a processor said processor operatively connected to said user-manipulable control and to said memory device for selectively downloading and playing the stored media contents, for receiving the signal from said user-manipulable control, and for associating the user-supplied rating indicated by the signal with the currently played media content, wherein said processor is further operable for ranking the media content in response to the user-supplied ratings in the ratings list and selectively downloading and playing media content in said memory based on the user-supplied ratings list (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, page 1, sections 1-3, and reference C, page 1, sections 1 and 2, page 2, sections 1 and 2, and page 3, wherein the processor is used in conjunction with the memory and the control to selectively download playlists and ratings and play the media contents. The music is positioned to be played based on the user-supplied ratings),

and said user-manipulable control includes input controls for indicating a positive rating and a negative rating, said processor being operative to move the currently playing content toward one of the top and the bottom of the ratings list if the positive rating is indicated and move the currently playing content toward the other one of the top and the bottom of the ratings list if the negative rating is indicated (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, page 1, sections 1-3, and reference C, page 1, sections 1 and 2, page 2, sections 1 and 2, and page 3, wherein the music is sorted based on the user-supplied ratings).

6. As per claim 2, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* teaches a device wherein said processor receives the signal from said user-manipulable control as said

processor plays the media content stored in said memory device (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, page 1, sections 1-3, and reference C, page 1, sections 1 and 2, page 2, sections 1 and 2, and page 3, wherein the processor receives the signal).

7. As per claim 3, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* teaches a device wherein the user-manipulable control includes a switch having a plurality of depressible buttons, each of said plurality of depressible buttons corresponding to one of said predefined categories of preferences (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, and reference C, page 1, sections 1 and 2, and page 2, sections 1 and 2, wherein the user generates a signal via his/her PC and/or playing device. A switch is a device that channels incoming data from any of multiple input ports to the specific output port).

8. As per claim 6, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* teaches a device wherein the user-manipulable control is attachable to a portion of the headphone (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference C, page 1, sections 1 and 2, and page 2, sections 1 and 2, and reference D, pages 3 and 6, wherein the user generates a signal via his/her PC and/or playing device. The playing device is attachable to the PC, and the headphones are attachable to the PC and playing device).

9. As per claim 7, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* discloses a device wherein said portion of a headphone includes a headphone cord (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference C, page 1, sections 1 and 2, and page 2, sections 1 and 2, and reference D, pages 3 and 6, wherein the user generates a signal via his/her

PC and/or playing device. The playing device is attachable via a cord to the PC, and the headphones are attachable to the PC and playing device via a cord).

10. As per claim 10, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* teaches a method wherein the processor is connectable to a server for transmitting the ratings list to a server, whereby the ratings list of user-supplied ratings is comparable with ratings lists of other users (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, page 1, sections 1-3, and reference C, page 1, sections 1 and 2, page 2, sections 1 and 2, and page 3, wherein the user receives recommendations based on the comparing of the user with the community).

11. As per claim 11, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* teaches a device wherein said processor is further operable for continuously updating a user-supplied rating of the media content based on signals input by the user during subsequent playing of the media content (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, page 1, sections 1-3, and reference C, page 1, sections 1 and 2, page 2, sections 1 and 2, and page, which discloses a dynamic system).

12. As per claim 12, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* teaches a device wherein said processor is operable for receiving recommendations of items from the server based on ratings of the items by other users with similar preferences (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, reference B, page 1, sections 1-3, and reference C, page 1, sections 1 and 2, page 2, sections 1 and 2, and page 3, wherein the user receives recommendations based on the comparing of the user with the community).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rio Portable MP3 Player bundled with MusicMatch Jukebox* in view of Gordon et al. (U.S. 6,208,335).

15. As per claim 4, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* discloses a device wherein said user-manipulable control includes depressable buttons, each of said buttons corresponding to one of said plurality of predefined categories of preferences as well as a remote located in the headphone cord (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, and reference C, page 1, sections 1 and 2, and page 2, sections 1 and 2, wherein the user generates a signal via his/her PC and/or playing device, the signal indicating a rating of the currently played media content. The user's rating is a preference rating which helps build the user's profile. See also reference D, pages 3 and 6). However, Thomson does not expressly disclose that said user-manipulable control includes a multi-position switch movable among different positions, each of said positions corresponding to one of said plurality of predefined categories of preferences.

Gorden et al. discloses a user-manipulable control includes a multi-position switch movable among different positions, each of said positions corresponding to one of said plurality of predefined categories of preferences (See column 2, lines 28-31, and column 6, lines 39-49,

which discloses a joystick associated with the remote control and used, with its multi-position switch, to select predefined regions).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a multi-position switch in the user-manipulabe control device because said switch would increase the ease of use of the control device for the user. A multi-position switch allows a user to more easily and more rapidly navigate through and input rating information (See Gorden et al., column 2, lines 13-17). Multi-position switches are old and well known to remote controls.

16. As per claim 5, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* discloses a device wherein said user-manipulable control includes depressable buttons as well as a remote located in the headphone cord (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, and reference C, page 1, sections 1 and 2, and page 2, sections 1 and 2, wherein the user generates a signal via his/her PC and/or playing device, the signal indicating a rating of the currently played media content. The user's rating is a preference rating which helps build the user's profile. See also reference D, pages 3 and 6). However, Thomson does not expressly disclose that said user-manipulable control includes a multi-position switch with a pivotable lever.

Gorden et al. teaches a device wherein the multi-position switch includes a pivotable lever (See column 2, lines 28-31, and column 6, lines 39-49, which discloses a joystick associated with the remote control. The multi-position joystick has a pivotable lever).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a multi-position switch with a pivotable lever in the user-manipulabe control device

because said switch with a pivotable lever would increase the ease of use of the control device for the user. A multi-position switch allows a user to more easily and more rapidly navigate through and input rating information (See Gorden et al., column 2, lines 13-17). Multi-position switches with pivotable levers are old and well known to remote controls.

17. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Rio Portable MP3 Player bundled with MusicMatch Jukebox*.

18. As per claim 9, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* discloses a device wherein said user-manipulable control indicates a user-supplied rating of currently played media content in response to a user-supplied rating, the user-supplied rating corresponding to one of a plurality of predefined categories of preferences and sorting the lists based on these preference ratings (See at least reference A, page 1, sections 1 and 2, and page 2, section 1, and reference C, page 1, sections 1 and 2, and page 2, sections 1 and 2, wherein the user generates a signal via his/her PC and/or playing device, the signal indicating a rating of the currently played media content. The user's rating is a preference rating which helps build the user's profile). However, *Rio Portable MP3 Player bundled with MusicMatch Jukebox* does not expressly disclose a most positive rating, a neutral rating, and a most negative rating, said processor being operative to move the currently playing content to the top of the rating list if the most positive rating is indicated and move the currently playing content to the bottom of the ratings list if the most negative rating is indicated.

Rio Portable MP3 Player bundled with MusicMatch Jukebox discloses preference ratings and sorting song lists using these preference ratings. It would have been obvious to one of

ordinary skill in the art at the time of the invention to include a most positive rating, a neutral rating, and a most negative rating and to move the currently playing content to the top or the bottom of the list using this rating in order to increase the ease of finding media in the collection that appeals to the user by sorting the media in a best to worst listing. See at least reference C, page 2, section 1.

Response to Arguments

19. Applicant's arguments with respect to claims 1-7 and 9-12 have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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